

MEMO ENDORSED

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August 12, 2008

VIA FIRST CLASS MAIL

Honorable Judge Kenneth M. Karas
United States District Court.
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: Aronson v. Branca
Case No. 07 CIV 9405 (KMK)

Motion Conference Request

Dear Judge Karas:

I represent the Plaintiff. Inadvertently, I filed the motion for Civil Contempt that was denied with leave to renew upon following proper procedure.

Accordingly, pursuant to Local Rule IIA, I request a pre-motion conference in order to move for Civil Contempt against the Defendant. The basis for the conference and motion sought is that Defendant sold property of Windward Holding Co. in violation of the TRO dated November 28, 2008, now a preliminary injunction.

The TRO states in relevant part:

After hearing and consideration, it is Ordered that, or further order of this court [*sic*], the Defendant is preliminarily enjoined from the sale, conveyance, transfer, encumbrance or pledging as collateral the following: [...] property held by or in the name of Windward Holdings Corp. [...] (emphasis added).

On July 7, 2008, the Defendant's Examination Before Trial was held. Therein, Defendant disclosed that in April 2008 Defendant violated the TRO by selling Windward's property located at 38 Seneca Street (*a/k/a* Seneca Walk), Ocean Bay Park, NY (the "Windward Property") without permission of this Court (or Plaintiff). Further, there has been no accounting or showing that the sale of the Windward Property was for valuable or proper consideration; the proceeds are missing too.

As evidence of the violation, in response to the following questions by Plaintiff's Counsel (Brian Reis, Esq.), Defendant gave the following answers:

Q. What properties did Windward Holdings Corp. own, Mr. Branca?

A. Windward holdings Corp. owns a Fire Island house, it owns a piece of land down in Florida and 700 Sommer Street. Transcript, pg. 11, lines 11-15.

[...]

Q. I just have one more question, Mr. Branca, for today. I just want to clarify one thing. 38 Seneca Walk was just sold in April?

A. Correct. 2008.

Q. Was that a property that was held by Windward Holdings?

A. Yes.

[...]

Q. The TRO directed that no properties of Windward Holdings be sold, encumbered or pledged.


A. No it didn't, sir. It said none of the properties that belonged to Yuly Aronson or that Yuly Aronson claimed an interest in could be sold. If you take your shareholder agreement, it clearly states the 38 Seneca was not part of that deal.

MR. REIS: I have no further questions for you. Thank you. Transcript, pg. 114, line 20 – pg. 145, line 15.

Based upon Defendant's foregoing admission that the TRO was violated, I respectfully request a pre-motion conference and permission to move for civil contempt thereafter.

Thank you for your attention to this matter.

Respectfully,


Andrew Small, Esq. (AS-1294)

Ccs: Via Facsimile 914.683.6770 and First Class Mail

Attorney for Defendant

Peter Goodrich, Esq.

Goodrich & Bendish

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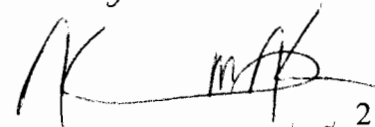
White Plains, New York 10603

Via email: 'brian@brianreislaw.com'

Attorney for Plaintiff

Brian Reis, Esq.

The Court will hold a pre-motion
conference on September 29, 2008, at 10:00
Defendant is to respond to this letter
by Sept. 10, 2008.

So ordered.

8/21/08²